

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BENJAMIN HARRY WRIGHT,

Defendant-Appellant.

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UNPUBLISHED

April 29, 2008

No. 277215

Macomb Circuit Court

LC No. 2006-001303-FC

Before: Bandstra, P.J., and Fitzgerald and Markey, JJ.

MEMORANDUM.

A jury convicted defendant of two counts of first-degree criminal sexual conduct (victim under 13), MCL 750.520b, and the trial court sentenced him to two concurrent terms of 10 to 40 years' imprisonment. Defendant appeals as of right. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant first argues that the jury should not have heard the detective recount the victim's interview at Care House because his testimony was inadmissible hearsay and none of the exceptions to the hearsay rule applied. Defendant contends that the detective's testimony was used for the sole purpose of bolstering the victim's testimony. Defendant failed to preserve this evidentiary issue by an objection at trial. Therefore, he must demonstrate plain error affecting a substantial right, and reversal is warranted only if the error resulted in the conviction of an innocent defendant or the error seriously affected the fairness, integrity, or public reputation of judicial proceedings. *People v Taylor*, 252 Mich App 519, 523; 652 NW2d 526 (2002).

Contrary to defendant's assertions, the detective's testimony was not hearsay because it was not offered to prove the truth of the matter asserted, MRE 801(C), but to clarify or explain other evidence or to present relevant surrounding circumstances. It was clear from the beginning of the case that defense counsel's strategy was to discredit the victim's testimony by arguing that that her allegations of two instances of digital penetration, as opposed to one possible instance of improper touching as she first told the police, resulted from suggestive questioning or coaching at Care House. The detective's testimony recounted the interview in order to demonstrate that Care House followed proper protocol in interviewing the victim.

Defendant next argues that the prosecutor suggested she had some special knowledge that the victim was telling the truth based on the fact that protocol at Care House had been followed.

Defendant claims that the prosecutor could not vouch for a witness in such a manner because it was tantamount to asking the jury to trust the prosecutor's judgment rather than the evidence presented. Because there was no contemporaneous objection to the prosecutor's comment and request for a curative instruction, our review of defendant's claim of prosecutorial misconduct is limited to ascertaining whether there was plain error that affected his substantial rights. *People v Callon*, 256 Mich App 312, 329; 662 NW2d 501 (2003).

No such error occurred. The prosecutor's closing argument did not imply that all allegations by those interviewed at Care House were true. Instead, the prosecutor was combating defense counsel's allegations that Care House was suggestive in its questioning of alleged victims. The prosecution was merely pointing out that Care House followed Michigan's protocol. Given the context of the prosecutor's statement and defendant's arguments at trial, the statements were not objectionable.

Affirmed.

/s/ Richard A. Bandstra  
/s/ E. Thomas Fitzgerald  
/s/ Jane E. Markey